
2. GENERAL RULES FOR DRAFTING AND REVISING

2.001 CHOOSING APPROPRIATE LANGUAGE. (1) **Sentence Structure.** Express the requester’s intent in a way that is as easy as possible to understand. To that end, it may help to use short, simple sentences and to avoid the unnecessary use of dependent clauses, complex sentences, or other complicated sentence structures.

(2) **Brevity.** If a word has the same meaning as a phrase, use the word. Use only necessary words. In construing statutes, courts consider each word and try to give it meaning. Unnecessary language is more likely to mislead than to help.

(3) **Simplicity.** If possible, use familiar words and phrases that best express the intended meaning according to common usage. Avoid legalese. Sutherland suggests the following:

It is traditional that statutes are unreadable, indefinite, confusing, and misleading. The very length of sentences and sections contributes to this result. The traditional belief that statutes must couch simple ideas capable of direct statement in pompous and verbose language adds greatly to confusion. The phrases ‘hereinafter referred to,’ ‘the said,’ and ‘the aforesaid,’ ‘unless otherwise provided by law,’ and similar expressions add little to understanding, usually are meaningless, and are never necessary.

... Simplicity may be gained by the exclusion of unnecessary words and by strictly following a

single pattern of statutory expression. *Sutherland Stat Const* (6th Ed), s. 21.5.

(4) **Precision.** Remember that your primary goal is to carry out the requester’s intent. Precision is the most important requirement in drafting. Do not substitute a familiar term that may have more than one meaning when the situation requires the use of a less familiar term to make the intended meaning unmistakable.

(5) **Advice from the Past.** (a) Quintillion, Roman rhetorician, circa 65 A.D.

1. Write quickly and you will never write well; write well, and you will soon write quickly.
2. Correct repeatedly and stoically.
3. Erasure is as important as writing.
4. The best method of correction is to put aside for a time what we have written, so that when we come to it again it may have an aspect of novelty, as of being another’s work; in this way we may preserve ourselves from regarding our writings with the affection that we lavish upon a newborn child.

(b) Sir Charles Wager, in debate with Lord Baltimore, British Parliament, 1739 (Comm. Deb. XI, 116, 117).

When a bill is hastily brought in, it generally requires mature deliberation, and many amendments in its progress through two houses, which always take up a great deal of time: whereas, when it is maturely considered, and fully concerted, before being brought in, the first draught of the bill is generally so perfect, that it requires but few amendments; and the rapidity of its progress always bears a proportion to the maturity of its first concoction.

(6) Questions of Form, Style, and Usage. If a question is not answered in the *Drafting Manual*, consult *The Chicago Manual of Style*. The LRB chief will resolve disagreements about grammar and style.

2.01 WORDS AND PHRASES. (1) Definitions. (a) Use a definition when there is more than one meaning for a word or phrase and the intended meaning is either not apparent from the context or more specific than the generally recognized meaning. Definitions appear in the following four places depending on the scope of their use:

1. Definitions that apply throughout the statutes are placed in alphabetical order in s. 990.01, stats. Determine whether to insert a definition in ch. 990, stats., in consultation with the revising attorney and a team leader. Use a computer search of the statutes and acts to find all of the current uses of the word or phrase. See also the heading “Words and Phrases” in the *Index* to the statutes.

2. Except as provided in subd. 4., definitions that apply to a particular subchapter, chapter, or series of chapters and that do not apply to other places in the statutes are placed in a section at the beginning of the subchapter or chapter, or at the beginning of the series of related chapters, to which they apply. Explicitly limit the definitions to the subchapter, chapter, or chapters and place them in alphabetical order in separate statutory units. If words or phrases defined in s. 990.01, stats., are used in a different sense in a subchapter, chapter, or series of chapters, redefine them in that subchapter or chapter, or in the first of the series of chapters, or use a different word. For example, see s. 66.0309 (1) (c), stats., which overrides a definition of “population”

that would otherwise apply under s. 990.01 (29), stats.

3. Except as provided in subd. 4., definitions that apply to a section of the statutes and that do not apply to other places in the chapter are placed at the beginning of the section to which they apply and are explicitly limited to that section. Place a definition in a separate subsection or, if there are two or more definitions, place the definitions in alphabetical order in a separate subsection further divided into appropriate paragraphs or subdivisions.

4. Place definitions after a statement of legislative intent, purpose, or findings that is placed in the statutes. See sec. 7.11, *Drafting Manual*, concerning statements of legislative intent, purpose, or findings.

(am) When deciding whether to insert a definition of a word or phrase into a statute, consider whether the word or phrase is critical to correctly interpreting the statute, whether the word or phrase is self-defining, and whether the word or phrase is defined in standard or legal dictionaries or in case law. It is best to insert a definition if the word or phrase is only defined in specialized trade dictionaries because those publications are not widely available. If there is more than one definition of the word or phrase in standard or legal dictionaries, consider whether the intended definition is clear. Without a definition, the common and approved usage of a nontechnical word or phrase is presumed to be the usage intended, and this usage will be determined by reference to a recognized dictionary. See *State v. Ehlenfeldt*, 94 Wis. 2d 347, 356 (1980). If there are existing statutory definitions of the word or phrase for other purposes (do a computer search for the word or phrase and check the list of definitions under “Words and Phrases” in the *Index* to the statutes), determine whether they are different from the definition that you intend. If there is no definition of a word or phrase in a statute that you create, a court may borrow a definition from another statute that defines the word or phrase.

NOTE: Where a word or phrase is specifically defined in a statute, its meaning is as defined in the statute and no other rule of statutory construction need be

applied; the definition given by the legislature controls the plain or ordinary meaning. *Citizens Concerned for Cranes and Doves v. DNR*, 270 Wis. 2d 318, 340, 344–45 (2004). In this case, the court also declined to interpret a term undefined in one chapter by using a definition of the term in another chapter, and actually concluded that the presence of a definition in one chapter and the absence of that definition in another chapter was a “strong indication” that the term had a different meaning in the two chapters. *Id.* at 347 n. 19.

(as) A definition is also sometimes used for reasons of efficiency or economy of expression. It may permit removal of words from the substantive text that will shorten that text and make it easier for the reader to understand. If a complicated provision can be shortened by substituting a term for a phrase without compromising accuracy, define and use the term.

(b) Do not add to the volume of the statutes by repeating definitions contained in s. 990.01, stats., if the intended meaning is the same.

(bm) Alphabetize definitions without regard to spaces or hyphens. For example, “farmland” precedes “farm residence.”

(c) Definitions should not include nondefinitional material. Placing nondefinitional material in a definition hides the operative provision and makes the proposal more difficult to understand and amend. For example, s. 40.02 (40), stats., which defines “leave of absence,” goes beyond the purpose of a definition by specifying when a leave of absence must terminate, except in certain instances.

(e) When drafting in a provision to which a definition of a word or phrase applies, use the defined word or phrase, not the definition or a synonym for the defined word or phrase. A limited exception to the rule of uniform usage occurs when the defined term is used with a similar term that has a different meaning. For example, “county board” is defined in s. 990.01 (6), stats., to mean the county board of

supervisors. However, other types of county boards are also created or authorized in the statutes. When mentioning one of these boards in context with the county board of supervisors, use the full names of both boards unless it is clear from the context to which board the statute refers.

(h) Section 35.17, stats., provides that the current edition of *Webster’s New International Dictionary* is the standard on questions of orthography (spelling). Use the first spelling shown in *Webster’s*, unless the LRB has adopted one of the other acceptable spellings. See sub. (2) and Appendix E, *Drafting Manual*.

(i) In a definition do not use “means and includes.” “Means” is complete and “includes” is partial. The term “includes” conveys a meaning of nonexclusiveness and allows a court or administering agency to adopt additional meanings; using “means” restricts them to reasonable constructions of your wording. Do not use “includes but is not limited to.” That phrase is redundant. See sec. 7.08, *Drafting Manual* [discussing court interpretation of a list of items following the word “includes”]. See also *State v. Popenhagen*, 309 Wis. 2d 601, 622–24 (2008) [comparing “means” and “includes,” interpreting items listed after the word “includes,” and citing the *Drafting Manual* with reference to the phrase “but is not limited to” and other matters]. Unless the intent is otherwise, use “means” rather than “includes.”

NOTE: Be aware that under the rule of *expresio unius est exclusio alterius* (the expression of one is the exclusion of another), “includes” may be construed contrary to its ordinary, nonexclusive meaning to limit the application of a statute to those items enumerated if there is some factual or textual evidence that the legislature so intended. See *State ex rel. Harris v. Larson*, 64 Wis. 2d 521, 527 (1974); *State v. Engler*, 80 Wis. 2d 402, 407–8 (1977) and *State v. Popenhagen*, 309 Wis. 2d 601, 623–24 (2008). See also *State v. James P.*, 281 Wis. 2d 685, 697–99 (2005); *State v. Delaney*, 259 Wis. 2d 77, 88 (2003); *State v. Powers*,

276 Wis. 2d 107, 120–21 (Ct.App. 2004). In *Citizens Concerned for Cranes and Doves v. DNR*, 270 Wis. 2d 318, 336–37 n. 11 (2004), the court stated that “includes” should generally be given an expansive meaning but may be read as a term of limitation or enumeration if there is evidence the legislature intended the statute to encompass only those provisions or exceptions specifically listed. The court indicated that subsequent legislative treatment striking a term in the list following “includes” showed legislative intent to make the list exhaustive so that the rule of *expressio unius est exclusio alterius* would apply. To avoid such a construction, if you strike a term in a list following “includes” but do not wish the list to be thereafter construed as exhaustive, it may help to add the phrase “but does not include [stricken term]” after the portion of the provision where the term is stricken.

(j) Avoid contorted definitions. For example, s. 66.0901 (1) (a), stats., defines “municipality” to include the state. A better term would have been “jurisdiction” or “governmental unit.” Contorted definitions are confusing and deceptive, and they can cause the drafter to accidentally use a defined term as if it had a normal meaning. Sutherland suggests that “[w]here definitions or directives produce meanings that are too skewed or applications that are too improbable, constitutional problems may be encountered. As a matter of due process, law must be declared with reasonable definitiveness, sufficient to give fair notice of what it requires or provides.” *Sutherland Stat Const* (6th Ed), s. 27.1.

(jm) Avoid circular definitions. When the definition of A depends on the meaning of B and the definition of B depends on the meaning of A, it is not possible to determine the meaning of either term. For example:

“Hill” means a usually rounded elevation of land that is lower than a mountain.

“Mountain” means a landmass that projects above its surroundings and is higher than a hill.

(k) A frequent error is to assume that a defined term in the statutes is also defined in a nonstatutory provision. For example, although in revising the unemployment insurance statutes you may use “department” because it is defined in s. 108.02 (10), stats., in a nonstatutory provision you must write “department of workforce development” or “department, as defined in section ... of the statutes,” or place the definition in the nonstatutory section.

(L) Do not use the term being defined in its own definition unless the definition merely particularizes a more general term, as in “‘contract’ means a contract approved by the board under s. 555.55,” “‘personal campaign committee’ means a campaign committee formed by a candidate,” or “‘child’ includes an adopted child.”

(m) Do not give two or more terms the same meaning. Select one term and use it uniformly.

(mn) Once you have defined a term, do not use the term to have any meaning other than the defined meaning. Instead, substitute a different term for the second meaning.

(n) 1. Before you create a new definition, search for uses of the term that you are defining.

2. Before you amend or repeal a definition, search for all uses of the defined term and check cross-references to the definition to determine the effect of the change. The term may be used in contexts of which you are unaware. If you amend or repeal a definition that is used in another defined term, search for all occurrences of the other defined term and check cross-references to the other term to determine secondary effects of the change.

(o) When you wish to apply a definition outside the statutory unit in which the definition applies, insert a definition that provides “[x] has the meaning given in s.” When you make occasional use of a defined term in a sentence outside the statutory unit in which its definition applies, use “[x], as defined in s.” A citation to another definition picks up the definitions of the defined words con-

tained in that definition. You need not apply a definition or define a term that has only one meaning in the statutes and that is commonly used (for example, general election, 2nd class city). When you use a defined term inside a statutory unit in which its definition applies, do not cite the statutory unit that includes the definition. See sec. 9.015 (2), *Drafting Manual*, concerning the use of cross-references.

(p) If you apply a definition that already appears in the statutes, you must realize that future changes in the first definition will be incorporated into the second definition because of the cross-reference

and s. 990.001 (5) (b), stats. If you want to avoid incorporating future changes, define the new term with the same words used in the other definition rather than using a cross-reference.

(q) When you create a definition, avoid using “unless the context requires otherwise” because the reader often cannot be certain when the defined term is used as defined and when it is not. When amending an existing definition, however, do not delete “unless the context requires otherwise” unless you determine that every use of the defined term is consistent with the definition.

(2) **Word Guide.** (a) *Compound words.* There are no rules that can be applied universally in the forming of compound words. Some are hyphenated; some are written separately; others are written as one word; and some may be written in more than one way, depending on their usage. Use the following guide for assistance, but always consult the dictionary if you are in doubt.

1. ‘Compound nouns.’ Always check the dictionary for proper spellings of compound nouns.

groundwater	mother-in-law	surface water
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2. ‘Compound adjectives.’ Use a hyphen to form compound adjectives that precede a noun. Rephrase the sentence if more than three words form a single adjective before a noun. When a compound adjective follows the verb as a predicate adjective, or if word usage requires otherwise, omit the hyphen.

Hyphenate	Do Not Hyphenate
in-kind contributions	different in kind or
rule-making authority	a rule making the
part-time employee	working part time
rent-a-car agency	to rent a car
10-month term	10 months
10-year period	10 years
18-year-old student	a student who is 18 years old

3. ‘Hanging compounds.’ Avoid using hanging compounds, such as “before- and after-school programs” and “12- or 16-page booklet.” Instead, reword. For example, use “before-school and after-school programs” or “programs before and after school”; similarly, use “12-page or 16-page booklet” or “booklet of 12 or 16 pages.”

4. ‘Adverbs.’ Do not use a hyphen to connect an adverb ending in “ly” with the participle that it modifies when the two together modify a following noun.

publicly owned facility	newly created statute
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(b) *Preferred statutory spelling.* Use the following spellings for words that have alternative spellings:

annulment	employees	enrollment	moneys
buses	enclosure	judgment	subpoenas
canceled (canceling)	endorsement	labeled (labeling)	willful
cancellation			

(c) *Separate words.* Write the following as separate words:

attorney general	delegate at large	privately owned	trade name
child care	fire fighter	sergeant at arms	wage earners

(d) *One word.* Write the following as one word:

anything	lawsuit	postwar	semimonthly
bimonthly	livestock	pretrial	statewide
bylaws	nighttime	prorate	stepparent
coinsurance	percent	reelect	trademark
cooperation	pipeline	reenact	

(e) *Latin and other non–English words.* Do not underscore or italicize Latin terms in the text of the statutes or in a nonstatutory provision. If a Latin term or other non–English term has an exact English equivalent, it is better to use the latter. For example, “final adjournment” is preferable to “adjournment sine die.” However, certain Latin or other non–English terms appear so frequently in case law that they, rather than their English equivalents, should be used. For example, in the tax statutes “situs” is preferable to “place.”

NOTE: See Appendix C, *Drafting Manual*, for English equivalents of Latin and Latin–based words and terms.

(f) *Plurals.* In compound words the significant word takes the plural.

attorneys–at–law	deputy sheriffs	notaries public
attorneys general	grants–in–aid	rights–of–way
corporation counsels	judge advocates	trade unions

(g) *Apostrophes.* 1. ‘Possessive singular.’ Add an apostrophe and *s* to form the possessive of singular nouns (for example, girl’s, department’s, business’s), except that when the name of a place or organization is a plural form ending in *s*, even though the entity is singular, add only an apostrophe (for example, board of regents’ decision, court of appeals’ copy).

2. ‘Possessive plural.’ To form the possessive of plural nouns, add an apostrophe if the plural ends in *s* (for example, girls’, businesses’); add an apostrophe and *s* if the plural does not end in *s* (for example, children’s, women’s).

3. ‘More descriptive than possessive.’ Do not use an apostrophe or apostrophe and *s* when a word is more descriptive than possessive (for example, department of veterans affairs [capitalized when not in statutes], witness fees, attorney fees, but worker’s compensation and children’s trust fund).

(h) *Word guide.* See Appendix E, *Drafting Manual*.

(i) *Proper names.* If you use the proper name of a business or organization in a draft, use the spelling that the business or organization uses rather than the preferred statutory spelling. If the business or orga-

nization is incorporated in Wisconsin, search for the exact corporate name on the Wisconsin Department of Financial Institutions Web site.

(3) Superfluous and Verbose Expressions.

Superfluous or Verbose	Preferred
absolutely null and void and of no effect	void
adequate number of	enough
adjudged, ordered, and decreed	adjudged
among and between	among (for more than two), between (for two)
at the place	where
at the same time	when
at the time	when
bonds, notes, drafts, and other evidence of indebtedness	evidence of indebtedness
both real and personal property	property
by means of	by
by virtue of	by, under
constitute and appoint	appoint
do and perform	do
does not operate to	does not
during such time as	while
during the course of	during
each and every	each
enter into a contract with	contract with
evidence, documentary and otherwise	evidence
excessive number of	too many
fail, refuse, and neglect	fail
final and conclusive	either word, as appropriate
for a period of	for
for the duration of	during, while
for the purpose of	to
for the reason that	because
from and after	beginning on, after
full and adequate	full
full and complete	complete

Superfluous or Verbose	Preferred
full force and effect	effect
give consideration to	consider
give recognition to	recognize
have knowledge of	know
have need of	need
however or provided	if, unless
in accordance with	under
in case	if
in cases in which	if, when
in connection with	with, about, concerning
in excess of	more than
in order to	to
in the amount of	for
in the event that	if
in the interest of	for
is able to	can
is applicable	applies
is authorized and directed to	shall
is authorized to	may
is binding upon	binds
is directed to	shall
is empowered to	may
is entitled to	may
is required to	shall
is unable to	cannot
it is the duty	shall
it shall be lawful	may
made and entered into	made
make application	apply
make an appointment of	appoint
make payment	pay
make provision for	provide
member of a partnership	partner
necessary or appropriate	necessary

Superfluous or Verbose	Preferred
no later than	by, before
of a technical nature	technical
on and after July 1	after June 30, beginning on July 1
on the part of	by
or, in the alternative	or
over and above	exceed
period of time	period, time
person, firm, corporation, or association	person (see s. 990.01 (26), stats.)
prior to	before
provision of law	law
pursuant to section	under s.
shall be construed to mean	means
sole and exclusive	either word, as appropriate
specified under	under
state of Wisconsin	this state
subsequent to	after
sufficient number of	enough
the Congress	Congress
the manner in which	how
to the effect that	so that
together with	and
under the provisions of	under s.
unless and until	either word, as appropriate
until such time as	until
with reference to	for
with the object of changing	to change

(4) Indefinite Words and References. Try to avoid indefinite words such as “frequently,” “untimely,” “unseasonable,” or “temporarily.” Use precise references.

NOTE: See ss. 13.486 (4), 17.29, 59.22 (4), 71.91 (5m) (a), 112.01 (16),

and 113.10, stats., for imprecise references.

(5) Rhetorical Flourishes. Avoid rhetorical flourishes such as “of any kind,” “of any nature,” or “under any circumstances.” You may, however,

use them in resolutions expressing praise or condolences.

(6) Present Tense. A statute is regarded as speaking in the present, as of the time it is read or applied. Use the present tense, for example, “the disposition is valid, ...” except when stating a condition precedent to the statute’s operation, for example, “Each public agency that has been included under the agreement shall withhold” See s. 990.001 (3), stats., and *McLeod v. State*, 85 Wis. 2d 787, 790–91 (Ct. App. 1978).

(7) Permissive or Mandatory Actions. **(a)** A duty or obligation is best expressed by “shall” and a power or privilege by “may.” However, because the Wisconsin Supreme Court has on occasion interpreted “may” to mean “shall,” carefully consider the context in which you use “may” or “shall.” Sometimes “shall” or “shall not” is construed as directory rather than mandatory. If you think a provision that is intended as mandatory may be construed as directory, you may state that actions inconsistent with the provision are void. This thwarts a “directory” interpretation. See the legal section memo on the subject; *State ex rel. Werlein v. Elamore*, 33 Wis. 2d 288 (1967); *Schmidt v. Dept. of Revenue*, 39 Wis. 2d 46, 53 (1968); *Warner v. Department of Transp.*, 102 Wis. 2d 232 (Ct. App. 1981); *Town of Nasewaupée v. City of Sturgeon Bay*, 146 Wis. 2d 492, 496–97 (Ct. App. 1988); *In re Paternity of S. A.*, 165 Wis. 2d 530, 535–39 (Ct. App. 1991); *State v. Moline*, 170 Wis. 2d 531, 541–42 (Ct. App. 1992); *State v. Stenklyft*, 281 Wis. 2d 484, 549–51 (2005) (concurrence and dissent); *Mews v. Department of Commerce*, 269 Wis. 2d 641, 651–53 (Ct. App. 2004); *Estate of Warnecke*, 292 Wis. 2d 438, 2006 WI App. 62 ¶12–¶13 (2006); *Kruczek v. DWD*, 278 Wis. 2d 563, 574–75 (Ct. App. 2005); and *Geisel v. Odulio*, 807 F. Supp. 500, 503–04 (W.D. Wis. 1992). See also *Koller v. Pierce County DHSS*, 187 Wis. 2d 1 (Ct. App. 1994) [interpreting “shall” as directory rather than mandatory to avoid “absurd, unreasonable or unjust” results] and *State v. Olson*, 222 Wis. 2d 283, 290–92 (Ct. App. 1998) [interpreting shall as directory where interpreting it as mandatory

“would defeat the legislative purpose of the statute”].

(aj) Upon occasion “may” has been construed as mandatory if a power is granted and “public interests or rights are concerned or where the public or third persons have a claim de jure which demands that the power should be exercised for the benefit of such right.” *Radloff v. General Cas. Co.*, 147 Wis. 2d 14, 19–20 (Ct. App. 1988) and *In re Marriage of Bouchard v. Bouchard*, 107 Wis. 2d 632, 634 (Ct. App. 1982).

(am) Do not use “shall” to direct the wrong entity. For example, “the clerk shall receive a salary of \$30,000 per year” is incorrect because it makes no sense to direct someone to receive a salary. It would be better to write something like “the board shall pay the clerk a salary of \$30,000 per year.”

(b) Do not use “can” to grant permission; “can” means “able to” and imparts no legal authority. Use “may” instead.

(8) Negations. Use “no person may” or “a person may not” to forbid behavior. “No person shall” could be interpreted to mean “no person is required to.” See *Milwaukee Alliance v. Elections Board*, 106 Wis. 2d 593, 609 (1982).

(9) Usages to Avoid. **(a)** Never use the compound “and/or.” “And” is conjunctive and “or” is disjunctive; decide whether you mean “and” or “or” and use the proper word. If you wish to allow one or both of two alternatives and the disjunctive is not clearly apparent from the context, phrase your statement like a penalty provision (... or ... or both).

NOTE: See *Employers Mut. Liability Ins. Co. v. Tollefsen*, 219 Wis. 434, 437 (1935) and *State v. Duychak*, 133 Wis. 2d 307, 319 (Ct. App. 1986). In *Bartholomew v. Wisconsin Patients Compensation Fund*, 293 Wis. 2d 38, 2006 WI 91 ¶79 (2006), the court overturned *Maurin v. Hall*, 274 Wis. 2d 28, 46–50 (2004), focusing in part on the word “and.” “A critical word in s. 655.017 is ‘and.’ By using the conjunctive word ‘and’ instead

of the disjunctive word ‘or,’ s. 655.017 makes clear that the caps in paragraphs (d) and (f) are not alternative provisions.” In *Maurin*, the majority had rejected this interpretation of the word “and” in the phrase “the limits under s. 893.55 (4) (d) and (f),” responding to the *Maurin* concurrence’s conjunctive/disjunctive argument (which became the *Bartholomew* majority position) that the provision “does little more than direct the reader to the binding limits in s. 893.55 (4) ... [and] does not imply ... a result in this case.” *Maurin*, 274 Wis. 2d at 48, 50. See also *State v. Freer*, 323 Wis. 2d 29, 36–38, 40–42 (Ct. App. 2009) [the court read “and” in the disjunctive to have the same meaning as “or” because, as urged by the state, the legislature has a history of using “and” and “or” incorrectly and, in the context of the statute, the disjunctive meaning fit better with the court’s understanding of the intended purpose of the provision; the court relied in part on an LRB analysis that also read “and” in the disjunctive].

(b) Do not state an exception in a separate sentence beginning with “provided” or use a clause beginning with “provided, however.” If a proviso or an exception is desired, state it directly in a new sentence or add a qualifying phrase to the original sentence.

(h) Use simple language. Whenever possible and appropriate, use the following word substitutions:

Do Not Use	Use
accorded	given
admit of	allow
afforded	given
ascertain	determine
cause it to be done	have it done
cease	stop

(c) Avoid using “such” in place of an article.

(d) Do not use “said,” “aforesaid,” “above,” “below,” “hereinbefore,” “herein,” “hereafter,” or similar words of reference. Their reference is unclear, especially if the statute is later amended. Instead, refer to the relevant statutory or nonstatutory unit.

(e) Do not use “any,” “each,” “every,” “all,” or “some” as an adjective if you can use “a,” “an,” or “the” with the same result.

(em) Do not use “any and all” because the phrase is self-contradictory.

(f) Do not use “deemed to be” or “deemed to include.” If something is to mean or include something else, say so directly. It is usually not advisable to treat something as though it were something it clearly is not because this is confusing. You may, however, use “considered to be” for a limited purpose.

NOTE: See sec. 2.01 (1) (j), *Drafting Manual*.

(g) Do not use “duly.” The word adds nothing to text that is designed to have a legal effect. It may, however, be appropriately used in resolutions, where more elegant language is permissible.

(gj) Do not use “it,” “the,” “that,” “this,” “these,” or “those” in reference to a noun unless the noun is so positioned that the reference is clear.

(gk) Do not use “different than.” Instead, use “different from.” (You may use “differently than.”)

Do Not Use	Use
cognizant of	aware of
contiguous to	next to
deem	consider
disseminate	send out, distribute
effectuate	carry out
employ (in the sense of use)	use
endeavor (verb)	try
evince	show
execute	sign
forthwith	immediately
indicate (in the sense of show)	show
institute	begin, start
interrogate	question
is entitled (in the sense of has the name)	is called
occasion (verb)	cause
of each year	annually
on his or her own application	at the person's request
opt for	choose
optimum	best
preserve	keep
provided that	if, except that, unless, or but
pursuant to	under
render (in the sense of give)	give
render (in the sense of cause to be)	make
require (in the sense of need)	need
subsequent	later
subsequent to	after
suffer (in the sense of permit)	permit
summon	send for, call

Do Not Use	Use
utilize	use
within or without the United States	inside or outside the United States

(9e) Person or Individual. (a) Use “person” if you want to apply a law to human beings and to nonhuman entities, such as corporations or governmental bodies. Use “person” if you want to apply a law only to human beings and the context clearly indicates that the law could not apply to nonhuman entities. For example, use “person” if the law relates to organ donors. Use “individual” if you want to limit the application of a law to human beings and the application is not apparent from the context. Avoid using the term “natural person” in place of “individual.” Whether you use “person” or “individual,” use the same form of reference in statutes relating to the same subject matter. See s. 990.01 (26), stats.

(b) Although “person” as defined in s. 990.01 (26), stats., includes the state and other bodies politic, a regulatory statute of general application may be interpreted not to apply to the state unless the state is mentioned. See *State ex rel. Dept. of Pub. Instruction v. ILHR Dept.*, 68 Wis. 2d 677, 681 (1975); 66 OAG 78, 82 (1977) and 67 OAG 169, 173 (1978); 68 OAG 104, 105 (1979); 68 OAG 403 (1979); and 69 OAG 269, 272 (1980). But see *DNR v. City of Waukesha*, 184 Wis. 2d 178, 193–97 (1994), narrowed on other grounds by *State ex rel. Auchinleck v. Town of LaGrange*, 200 Wis. 2d 585, 597 (1996), [application of regulatory statute of general application to the state may be implied if the objective of the statute cannot be accomplished without including the state and if requiring the state to comply with the statute will not vitally interfere with the processes of government]. See also secs. 7.02 (3) and 7.31 (2), *Drafting Manual*.

(9m) “To” Includes Last Designation. When fixing parameters, “to” includes the last amount, date, or other thing designated. For example, in the phrase “for automobiles from 2,001 to 3,000 pounds, the fee is \$25,” 3,000 pounds is the greatest

weight covered by the fee. Do not use “through” in this context.

NOTE: See s. 990.001 (5) (a) and (14), stats., concerning numeric sequences.

(10) Active Verb. It is usually better to use an active rather than a passive verb. For example, state “the clerk of the circuit court shall appoint one or more deputies” rather than “one or more deputies shall be appointed.” Use of the passive voice frequently makes it unclear who has the responsibility to carry out a law.

(11) Singular and Plural. Singular words may apply to several persons or things as well as to one person or thing, and plural words may apply to one person or thing. It is better form and easier to draft a statute in the singular, unless the plural is exclusively intended or unless it is necessary to make it clear that something applies in the aggregate or to avoid the unintended implication that every person with specified qualifications is entitled to a grant or other benefit. Do not use the singular and plural of the same word joined by “or.” For example, do not say “The applicant shall submit the required fee or fees.”

NOTE: See s. 990.001 (1), stats.

(12) Mood. The indicative mood expresses a fact or declaration. The imperative mood expresses a command. The subjunctive mood expresses a hypothetical situation or contingency. Draft in the indicative mood whenever possible. Avoid false imperatives, which are expressions that seem to direct behavior but do not. Do not say “The authority shall be a body corporate.” Say “The authority is a body corporate.”

(12m) Use of “Should.” Statutes do not exhort. Accordingly, do not write “The department should.” Use “The department shall” or “The department may.” Do not use “The department

should not.” Rather, use “The department may not.” See sec. 2.06 (1), *Drafting Manual*.

(13) Indication of Intent. Do not write “The legislature intends that the department shall.” Use “The department shall” or “The department may.” Expressions of intent make it unclear whether the statement is a command or an encouragement.

(14) Pronouns. Use a pronoun only if its referent is unmistakable.

(14m) Use of “That” or “Which.” (a) “That” initiates a restrictive clause that:

1. Restricts or limits or describes and defines the word modified; and
2. Is necessary to identify the word modified.

(b) When “that” is used, the meaning of the sentence is not complete without the “that” clause. The clause is not parenthetical, but vital, so commas *should not be* used to enclose the clause.

CORRECT: A fence that conforms to s. 90.02 is a legal fence.

(c) Generally, use “which” to initiate a nonrestrictive clause that:

1. Does not restrict the word modified; and
2. Gives additional, supplemental, or descriptive information about the word modified.

(d) When “which” initiates a nonrestrictive clause, the meaning of the sentence is complete without the “which” clause, so commas *should be* used to enclose the clause.

CORRECT: A fence, which may be a legal fence according to s. 90.02, must be built within 30 days after receiving the permit.

(e) The use of “which” to introduce a subordinate clause is relatively uncommon in good bill drafting because nonessential information is usually inappropriate in statutes.

(15) Consistency. (a) In standard English composition or speech, synonyms are often employed to avoid repetition or to add emphasis. In drafting, avoid using synonyms. Always say the same thing in the same way and say different things

in different ways. A change in wording will probably be construed to convey a change in meaning. “Unlike literary composition, legislative style should avoid variation in sentence form and should use identical words for the expression of identical ideas to the point of monotony.” *Sutherland Stat Const* (6th Ed), s. 21.5. See *Landwehr v. Landwehr*, 291 Wis. 2d 49, 2006 WI 64 P27 (2006) [because two provisions of 1999 budget bill used different terms they were intended to have different meanings]; *Orion Flight Services v. Basler Flight Services*, 290 Wis. 2d 421, 2006 WI 51 ¶¶34–¶43, ¶69 (2006) [where different terms have different meanings in one chapter, they were not intended to have the same meaning in another chapter; consistent use of certain term throughout the statutes is meaningful in that undefined use of term is not intended to vary from it]; *The Warehouse II, LLC v. DOT*, 291 Wis. 2d 80, 2006 WI 62 ¶24 (2006) [parallel wording as part of a common statutory scheme is assumed to refer to the same thing]; *Custodian of Records v. State*, 272 Wis. 2d 208, 221–23 (2004), modified at 277 Wis. 2d 75 (2004) [terms “confidential” and “privilege” did not have the same meaning; providing for confidentiality did not itself create a privilege].

(b) Note that many words have more than one meaning. Rather than using one word in more than one sense in the same context, use different words for different meanings, especially if one meaning is given in a statutory definition.

NOTE: See *Weber v. Town of Saukville*, 209 Wis. 2d 214, 231 (1997); *Armes v. Kenosha County*, 81 Wis. 2d 309, 318 (1977) [when the legislature uses two different phrases in the same section, it is presumed that the legislature intends the two phrases to have different meanings]. See also *Thomas v. Iowa Nat. Mut. Ins. Co.*, 132 Wis. 2d 18, 23 (Ct. App. 1986) [if a legal term has a well-settled meaning, the legislature intends to convey that meaning when using the term].

(16) Parallel Structure. When you use parallel structure, be careful to use it correctly. For

example, do not write “A copy may be obtained by mail or if a person appears personally.” Instead, write “A person may obtain a copy by mail or in person.”

(16g) Directness. Avoid the double negative.

INCORRECT: A person not ineligible to be certified may....

CORRECT: A person eligible to be certified may....

INCORRECT: An indigent other than one without children may

CORRECT: An indigent with children may

NOTE: In seeking to avoid a double negative, be careful to avoid making substantive changes such as changing an exception into a grant of authority.

(16r) Finite Verbs. Whenever possible, use finite verbs rather than their corresponding participles, infinitives, gerunds, or other noun or adjective forms. Do not write “give consideration to”; write “consider.” Do not write “is applicable”; write “applies.”

(17) Use of Infinitives. (a) Try to avoid using split infinitives, but do not hesitate to use a split infinitive if necessary to avoid ambiguity. If you restructure a sentence to avoid a split infinitive, be sure that the modifiers are correctly placed. For example if you intend “substantially” to modify “increase”:

INCORRECT: The company agrees *substantially to increase* the salaries.

CORRECT: The company agrees *to increase* the salaries substantially.

(b) If qualifying words separate infinitive phrases, repeat “to” in each phrase; if no qualifying words intervene, do not repeat “to.”

CORRECT: *To punish and expose* the guilty is one thing; *to help* the unfortunate is another.

CORRECT: It is improper for the debtor *to take* an unearned discount and then *to refuse* to pay the difference.

(17g) Use of “If,” “When,” or “Where.” (a) “Where” denotes *place* only.

(b) When you are expressing a condition that may never occur, use “if” to introduce the condition, not “when” or “where.”

CORRECT: If the suspect resists arrest, the officer may use force to subdue him or her.

(c) If the condition may occur more than once, you may use “whenever” or “if.”

(d) If the condition is certain to occur, use “when,” not “if,” “where,” or “whenever.”

CORRECT: When this section takes effect, the court shall dismiss all pending proceedings.

(17m) Modifiers. (a) Be careful that you modify only the words that you intend to modify. For example, “an 18-year-old parolee, probationer, or convict” is ambiguous: does “18-year-old” modify only “parolee” or does it also modify “probationer” and “convict”? Similarly, “licensees may hunt moose, deer, or ducks that are not on the endangered species list” is ambiguous.

(b) If you intend the modifier to modify all of the terms in a series, write something such as:

... a person who is a parolee, probationer, or convict and who is at least 18 years old

or

... licensees may hunt any species of the following that is not on the endangered species list:

1. Moose.
2. Deer.
3. Ducks.

(c) If you intend the modifier to modify only one term in a series, write something like:

... a probationer who is at least 18 years old, a parolee or a convict

or

... licensees may hunt any of the following:

1. Moose.
2. Deer.
3. Ducks that are not on the endangered species list.

(d) See *Vandervelde v. Green Lake*, 72 Wis. 2d 210, 214–15 (1976) [qualifying or limiting words

in a statute generally refer to the nearest antecedent only]; *State v. Stepniewski*, 105 Wis. 2d 261, 267–75 (1982) [“intentionally” modifies only “refuses” in the phrase “intentionally refuses, neglects or fails”]; and *Eggert Group, LLC v. Town of Harrison*, 372 F. Supp. 2d 1123, 1135–37 (E.D. Wis. 2005) [relying on the *Chicago Manual of Style*, the court concluded that, in the phrase “live act, demonstration, dance or exhibition,” the term “live” modifies only the word “act” and not “demonstration,” “dance,” or “exhibition”]. But see *Lund v. Kokemoor*, 195 Wis. 2d 727 (Ct. App. 1995) [“economic” modifies both “injuries” and “damages” in the phrase “other economic injuries and damages”]. See also *State v. Powers*, 276 Wis. 2d 107, 121–22 (Ct. App. 2004) [citing this provision of the *Drafting Manual*]. In *State v. Jensen*, ___ Wis. 2d ___, 2010 WI 38 (2010), the court concluded that, in the phrase, “any matter that involves elections, ethics, or lobbying regulation” the term “regulation” is modified only by “lobbying” and not by “elections” or “ethics.” *Id.* at ¶11, ¶44–¶47. The court also concluded that, where serial commas were otherwise used in the same statutory unit, the lack of a serial comma in an earlier clause led to the conclusion that the earlier clause was intended to modify the latter clause. ¶22–¶23.

(17r) Noun Strings. Avoid long strings of nouns used as modifiers such as “uniform resource location procedure problem.” Instead write “the problem with the procedure for uniform resource location.”

(18) Standard English. Draft only in standard English. Never use a word that might be considered slang. The requirement for standard English does not mean, however, that you should choose a sophisticated word when a simple word will convey the same concept. In general, do not use abbreviations, contractions, or acronyms, except as provided in sec. 2.04, *Drafting Manual*. If you do abbreviate, define the abbreviated term.

(19) Gender. Appendix A, *Drafting Manual*, contains a list of recommended gender-neutral terms to replace gender-linked terms frequently used in the statutes. Be careful to avoid changing

the meaning of a provision when replacing gender-linked terms. Try to phrase sentences to avoid the use of personal pronouns. Be aware, however, that failure to use a noun or personal pronoun sometimes results in vagueness. Do not sacrifice precision to avoid redundancy. Revision and correction acts, including 1995 Wisconsin Act 195 and 1997 Wisconsin Act 35, removed from the statutes personal pronouns and other language that discriminated on the basis of gender. See chapter 94, laws of 1975, section 90, which expresses state drafting policy in this area.

NOTE: See ss. 13.92 (1) (bm) 13. and 990.001 (2), stats., and *The Handbook of Nonsexist Writing*, Casey Miller and Kate Swift, (Harper and Row, 1988). But see 1995 Wisconsin Act 225, sections 383 and 412, where the gender-specific term “journeyman” was not removed from or replaced in the statutes because of the lack of an accepted gender-neutral alternative and the desire to avoid any inference that a substantive change was being made. See also 1999 Wisconsin Act 85, sections 12 and 14, where a gender-neutral term was replaced with another gender-neutral term because the first gender-neutral term was not synonymous with the gender-specific term it replaced.

(20) Use of the Phrase “of the Statutes.” (a) Do not write “of the statutes” in the text of a statute.

(am) Use “of the statutes” in the section heading of each bill section that makes a statutory change.

(b) Use “of the statutes” in nonstatutory material to refer to a unit of the statutes. The reference should read, for example, “as required by section 6.25 of the statutes” or “subject to review under chapter 227 of the statutes.” To refer to a statute section as it existed before being changed, use “as required by section 6.25, 1987 stats.” See sec. 9.02 (12), *Drafting Manual*.

(21) Outmoded Terminology. (a) When you amend a section containing questionable,

imprecise, or outmoded terminology, you may want to change or delete the material. For instance s. 2.04, stats., reads “counties now or hereafter organized” and s. 83.025 (1) (a), stats., reads “county trunk highways heretofore selected.” Be careful to avoid changing the meaning of a section

when removing questionable, imprecise, or outmoded terminology.

NOTE: See sec. 4.06 (5) and ch. 24, *Drafting Manual*, concerning revising statutes.

(b) Update “yeas and nays” to “ayes and noes.”

(22) Derogatory Terms. (a) Most appearances of the following words and terms were removed from the statutes by chapter 83, laws of 1977. Avoid using these words and terms:

asylum	deformity	insane	mental or physical infirmity
crippled	feeble-minded	invalid (noun)	senile
defective person	idiot	mental or physical defect	

(b) Avoid using the terms “disabled person” and “person who suffers from a disability (or other condition),” unless you must conform language to federal law. Instead use “person with a disability” or “person who has a disability.”

(23) Words Frequently Confused.

Affect is both a noun and a verb. When used as a noun it means an observable expression of emotion. When used as a verb it conveys action against or upon a person, or influence.

Effect is both a noun and a verb. When used as a noun it means that which is brought about as a result or an impression. When used as a verb it conveys accomplishment or achievement of a result.

Biannual means twice a year. Use “semiannual” instead.

Biennial means once every two years.

Capital means capital city, money or assets, first-rate, or related to physical improvements.

Capitol means the statehouse.

Continual means frequently recurring. It refers to time and implies close succession.

Continuous means uninterrupted. It refers to time and space and implies continuity.

Ensure means to make certain or guarantee.

Insure means to procure insurance for something or to make certain.

Assure means to try to increase another’s confidence or to make certain.

NOTE: To avoid ambiguity, use “insure” in drafting only when you are discussing insurance. Note also that *Merriam Webster’s Collegiate Dictionary*, Eleventh Edition, states that “assure” implies the removal of doubt from a person’s mind.

Farther pertains to actual distance.

Further means additional or more advanced.

Partially means in some degree (when speaking of a condition or state).

Partly means in part.

Principal is both a noun and an adjective. When used as a noun it means a controlling authority, employer, head officer of a school, or sum of money. When used as an adjective it means most important.

Principle means a fundamental law, fact, or assumption.

Therefore means in place of, for that, or for it. In drafting, use one of those synonyms instead of “therefor.”

Therefore means consequently or on that ground.

(23m) Use of “Filing” and “Recording.” Generally, documents received by a register of deeds are recorded instead of filed. See s. 59.43 (1), stats. Plats and certified survey maps, however, are recorded *and* filed; notices of lis pendens (pending lawsuits affecting property) are recorded *or* filed; and notices of federal tax liens, documents governed by the uniform commercial code, and vital records are still filed. If a document is filed with a register of deeds, the original document is kept in his or her office. If a document is recorded with a register of deeds, a permanent copy of the original is kept and the original document, unless also filed, is returned to the submitter.

(24) Policy of Continuous Revision. (a) Wisconsin has a more orderly system of statutory organization than do most other states. Each change is fully integrated into the existing statutes, rather than simply appended to them. The entire statutory law is contained in the three hardbound (five softbound) volumes of statutes, which are issued biennially. To maintain this system, each draft should be tailored to blend as well as possible with existing law and to leave no loose ends that will create ambiguity or redundancy. The policy is designed to maximize utility of the statutes and provide the greatest possible assurance that the laws will be properly interpreted. Joint Rule 53 (1) mandates this policy of continuous revision.

(b) Unless the material to which a reference is needed is voluminous and of limited effect, do not refer to former editions of the statutes (for example, “as defined in s. 51.01, 1969 stats.” or “as defined in s. 51.01, 1969 stats. and s. 59.06, 1969 stats.”). That practice requires the user to have the volume referred to in order to know the law and thwarts the purpose of codification. It is better to put the necessary text in the current statutes. However, see sec. 9.02 (1m) (d), *Drafting Manual*. If you must refer to a former edition of the statutes in a series of

cross-references, make it clear whether the cross-reference to the former edition applies to all of the series or only to some items of the series (for example, “as defined in s. 59.13, 1969 stats., and s. 51.01”). In a series of cross-references, place the former statutes ahead of current statutes.

(d) Avoid terms such as “presently,” “currently,” “now,” “existing,” “heretofore,” and “hereafter”; they make no sense once the material is codified. The preferred practice is to refer to “the effective date of this [section, subsection, paragraph, subdivision] ... [LRB inserts date],”. This permits the LRB to substitute the actual date. See s. 13.92 (1) (bm) 3., stats., and sec. 7.04 (14), *Drafting Manual*.

(25) Use of Timeless Verbs. In the statutes, the use of verbs such as “prepare,” “establish,” “initiate,” “expand,” “improve,” “develop,” “formulate,” “increase,” or “decrease” is usually inappropriate unless the intent is to require or allow an action to be taken once and then cease. If you intend for the action to cease at some point, specify a date by which the action will conclude or insert an expiration (sunset) date for the provision. Instead of using time-sensitive verbs, it is generally better practice to use verbs that will give the statutes continuing vitality, such as “provide,” “administer,” “maintain,” “ensure,” “prescribe,” “maximize,” or “minimize.” If appropriate, include a nonstatutory provision specifying a time frame during which specified action is to be undertaken and completed. See sec. 12.01 (2), *Drafting Manual*, concerning nonstatutory provisions.

(26) Place Names and Addresses. (a) Many political subdivisions, bodies of water, and other geographic features in Wisconsin have the same names. When you refer to one of them, be as specific as necessary to clarify your intent. Consult the *Atlas of Wisconsin*, located in the library, for an index to all political subdivisions and geographic features. The index will tell you whether your reference needs to be more precise. See sec. 14.01 (3), *Drafting Manual*.

(b) The U.S. Postal Service does not follow municipal boundaries in determining postal addresses; the postal address for one city may

include all or parts of other cities, villages, or towns. Therefore, if you mention the address of a place refer to the political jurisdiction unless the address is used exclusively for postal purposes. For example, see s. 70.119 (9), stats.

NOTE: See sec. 14.01, *Drafting Manual*, for discussion of political subdivisions.

(27) Reference to “Tax” or “Fee.” A tax,

which may, alternatively, be termed an “assessment,” is imposed under the state’s taxing power. A fee is imposed under the state’s police power. With a fee, there is generally some nexus between the payer and services that are financed in whole or in part by the revenue generated. With a tax, there is not a direct nexus. When imposing a tax or fee, determine which term is most appropriate and, if possible, avoid using the other term.

2.02 QUANTITIES AND MEASUREMENTS. **(1) Arabic Numerals.** In statutes and in non-statutory provisions, use Arabic numerals except as provided in pars. (a) to (d). In analyses, relating clauses, drafter’s notes, memoranda, and resolutions other than resolutions to amend the legislative rules, generally spell out numbers from one to ten, except in percentages or in a series, and use Arabic numerals for all others, except at the beginning of a sentence. In resolutions to amend the constitution, generally spell out one to ten and first to tenth.

(a) Write numbers out at the beginning of a sentence.

One hundred twenty days	Four thousand dollars
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(b) Use “one” except in references to dates, percentages, or money, or in a series.

January 1	1, 5, or 7	\$1,000,000 (do not use \$1 million)
1 percent	\$1	one or more

(c) Use “first” except in references to mail or cities, or in a series.

1st class mail	1st class city	the first day of the month
1st class postage	1st, 2nd, or 3rd	

(d) Write out simple fractions. Do not use a hyphen to join a whole number to a fraction because a hyphen can change the meaning of a fraction. Whenever possible, use decimals or percentages. For example, use 1.5 not 1 1/2.

one-third	forty-two hundredths (means 42/100)
4 3/7 miles (not 4–3/7)	forty two-hundredths (means 40/200)
0.5 percent (not .5 percent)	one twenty-fifth (means 1/25)
51 percent	

(2) Numbers. Use the following guide for assistance in drafting, or search the statute database:

(a) *Age.*

under the age of 18	at least 14 years of age	16-year-old
under 18 years of age	has attained the age of 14	16 years of age or older

(b) Time. 1. Generally, time is indicated as follows:

4:30 p.m.	10 a.m.	12 noon	12 midnight
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2. Compute the time within which an act is to be done by excluding the first day and including the last. For example, if an action is required to be taken within 10 days of an event, the day on which the event occurs is not counted as one of the 10 days. When you express that time in hours exclude Sunday and any legal holiday (listed in s. 995.20, stats.), from midnight to midnight. See sub. (3) (c) and (e). Note the following:

- a. “Week” means seven consecutive days.
- b. “Month” means a calendar month unless otherwise expressed.
- c. “Year” means a calendar year unless otherwise expressed.

NOTE: See ss. 990.001 (4) and (12) and 990.01 (21), (46), and (49), stats.

(c) Money.

15 cents	\$4 (not \$4.00)	50-cent fee (not \$.50 fee)
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(d) Measures.

10 yards	8 inches by 12 inches	5 feet 3 inches
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(e) Latitude and longitude. Do not use the symbols for degrees, minutes, and seconds.

latitude 40 degrees 19 minutes 12 seconds N.	longitude 30 degrees 01 minute 12 seconds W.
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(f) Temperature.

34 degrees Fahrenheit

(h) Land descriptions.

E-1/2 of SE-1/4 of NE-1/4 of Sec. 6, T. 8 N., R. 40 E.
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(i) Motorcycles and prisons.

Type 1 motorcycle	Type 1 prison
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(3) Dates. (a) *Generally.* When a date includes a month, a day, and a year, set off the year by commas; when the date includes only the month and year, do not use a comma. “The taxes imposed by this section beginning on January 1, 2011, and ending on March 31, 2011, are due in April 2011.”

(b) *Transpose dates.* When you amend, change dates by striking and underscoring to read: “May 15” rather than “the fifteenth day of May.”

(c) *Computation of filing deadlines.* If an act must be done no later than a Saturday, and the body or officer with whom the act is to be done does not have Saturday office hours, it may be done on the next

day on which the body or officer has office hours and that is not a Sunday or legal holiday. If the act is to be done on Sunday or a legal holiday, it may be done on the “next secular day.” See s. 990.001 (4) (b) and (c), stats.

(d) Reference to deadlines. Instead of providing “on or before June 30, 2011,” provide simply “before July 1, 2011.”

(e) Exclude surplus material. Time computations are explained in s. 990.001 (4) (a) and (d), stats. (first day excluded, last day included). Do not provide for these situations unless you want a different method of time computation.

(f) Avoid ambiguity. Do not use “from” before a date. It is unclear whether you intend to include the date itself. Instead, use “beginning on” or “after” depending upon your intent.

2.03 CAPITALIZATION. (1) General. Avoid using capitals except for proper names. For proper names, capitalize according to standard rules of English usage with one major exception: in statutes and in nonstatutory provisions do not capitalize state or federal departments or agencies other than the University of Wisconsin System. In an analysis or relating clause, capitalize state and federal departments and agencies, but do not capitalize “department” when used alone (for example, “The bill also requires the department to ...”). The following guide helps in determining whether to capitalize:

(2) Proper Names, Places, or Designations.

Alzheimer’s disease	Devil’s Lake	Mississippi River
Camp Randall	Great Lakes	Pacific Ocean
city of Madison, Sauk City	Lake Tomahawk	Spanish–American War
Dane County	Lakes Superior and Erie	West Wilson Street
Dane and Racine counties	Madeline Island	World War II

(3) Nations, Nationalities, or Ethnic Groups.

Black American, American Indian	Indian reservation	pro–British
English language	non–American	un–American

(4) Churches, Religious Organizations, or Memorials.

Christian Science Church	Roman Catholic Church
Forest Home Cemetery	Saint John’s Lutheran Church

(5) Political Parties.

Communist Party	Democratic Party	Republican Party	Socialist Party
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(6) State Departments and Agencies, in the statutes and nonstatutory provisions.

department of veterans affairs	University of Wisconsin System
investment board	University of Wisconsin–Extension
public service commission	

(6m) State Institutions.

Columbia Correctional Institution	Mendota Mental Health Institute
Ethan Allen School	Wisconsin Veterans Home

(7) Federal Departments and Agencies, in the statutes and nonstatutory provisions.

federal department of health and human services	national park service
federal housing administration	U.S. Congress
federal government	U.S. fish and wildlife service
federal reserve bank	

NOTE: See sec. 2.11, *Drafting Manual*, concerning identification of a federal agency.

(8) Corporations and Organizations.

American Red Cross	Madison Gas and Electric Company
American Veterans of World War II	Woman’s Christian Temperance Union

(9) Funds.

children’s trust fund	lottery fund
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(10) Acts and Laws.

G.I. Bill of Rights	Internal Revenue Code	Personal Responsibility and Work Opportunity Act of 1996
Equal Rights Amendment	P.L. 83–550	Americans with Disabilities Act
U.S. Constitution		

(11) Legal Holidays.

Christmas Day	Thanksgiving	Independence Day	Memorial Day
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(12) Books, Newspapers, and Magazines.

Capital Times	Blue Book	Natural Resources Magazine	Wisconsin Annotations
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(13) Highway Designations and Streets. (See 1993 Wisconsin Act 396; 1995 Wisconsin Act 113, sections 53 and 9155 (3x); 1995 Wisconsin Act 297; and 1997 Wisconsin Act 27, section 2473r.)

Class “B” highway	CTH “D”	100 N. Hamilton Street	STH 78	USH 141	I 90
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(14) Licenses, Malt Beverages and Liquor.

Class B (any license except alcohol beverages licenses)	“Class B” (for on–premises liquor)
Class “B” (for on–premises beer)	

(15) Other. Use lowercase for titles unless they precede the name of a person.

adjutant general	Senator Jones	governor of Wisconsin	president of the United States
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2.04 ABBREVIATIONS: REFERENCES.

(1) References to Subunits of the Statutes. Ordinarily abbreviations are not used in the statutes. References to subunits of the statutes are, however, abbreviated except at the beginning of a sentence. Use only the following abbreviations:

(a) To chapters. Use “ch. 5” or “chs. 5 and 8.” In a statute in ch. 5, stats., use “this chapter and ch. 8.” When you refer to a series of more than two chapters including the one in which you are placing the reference, use “chs. 5 to 8,” not “this chapter and chs. 6 to 8.”

(am) To subchapters. In a chapter, use “subch. III,” “subchs. III to V,” or “subchs. III, IV, and V,” to refer to subchapters of the chapter. Otherwise use “subch. II of ch. 116.”

(b) To sections. Use “s. 23.09” or “ss. 23.09 and 24.11.”

(c) To subsections. Use “sub. (7)” or “subs. (7) and (9).”

(d) To paragraphs. Use “par. (a)” or “pars. (a) and (b).”

(e) To subdivisions. Use “subd. 2.” or “subsds. 2. and 4.” You must include a period after the subdivision number.

(en) To subdivision paragraphs. Use “subd. 1. a.” or “subd. 1. a. and b.”; however, use “this subd. 1. a.” if you are referring to the same subdivision paragraph in which you are placing the cross-reference.

(ep) To introductions. Use “s. 23.09 (intro.),” “sub. (3) (intro.),” “par. (b) (intro.),” or “subd. 1. (intro.).”

(et) To federal public law. If you must use a reference to a federal public law, use “section,” not “s.” or “sec.”

(f) Singular form. Use “s. 71.05 or 71.06.”

(g) Plural form. Use “ss. 71.05 and 71.06” or “ss. 71.05 to 71.07.” Use “to” only when you refer to three or more statutory units.

(h) Combination of plural and singular forms. Use “under ss. 71.05, 71.10, and 71.16 or under s. 171.25” or “under ss. 71.05 and 71.10 or under s. 71.16 or 171.25.”

(i) To prior statutes. Use “s. 71.05, 1989 stats., and s. 71.09, 1989 stats.” (not “ss. 71.05 and 71.09, 1989 stats.”) and use “s. 350.12 (3) (dm), 1989 stats., or s. 350.12 (5) (b), 1989 stats.” (not “s. 350.12 (3) (dm) or (5) (b), 1989 stats.”) to make it clear that all references in a series are to prior statutes.

(j) Abbreviate only the highest unit. Use “s. 62.23 (7) (d) 1. a.,” “sub. (7) (d) 1. a.,” “par. (d) 1. a.,” and “subd. 1. a.”

(k) Abbreviate singular form of highest unit. Use “s. 61.42 (7) and (8),” “sub. (7) (a) and (b),” “par. (a) 1. and 2.,” or “subd. 1. a. and b.”

NOTE: See sec. 9.02 (2), *Drafting Manual*, for instructions on how to draft references in the same section of the statutes.

(2) Acronyms. **(a)** Do not use an acronym in the text of a proposal, except as provided in par. (ar).

(ar) You may use an acronym in the text of a proposal if it is so widely used that readers are more likely to recognize the acronym than the full term. For example, you may use HIV and AIDS. Appearance in a standard dictionary is a good indication of wide use of an acronym. If you use an acronym in this circumstance, you must define it. Place the definition of an acronym in alphabetical order according to the letters in the acronym, not according to the words for which the letters stand.

(b) Except as provided in par. (c), in an analysis or drafter’s note, you may use an acronym for major state agencies or for well-known terms, such as

“CHIPS petition.” Do not use an acronym for smaller administrative units, such as the division of housing in DOA. In an analysis, if the name of a major state agency or a well-known term appears only once, do not use an acronym, but if the name or term appears more than once and you wish to use an acronym, use the full name or term the first time that it appears, followed by the acronym in parentheses. After that, use the acronym.

(c) In a budget draft prepared for the Department of Administration, use acronyms in the analysis for major state agencies.

(3) **References to the United States.** Write out “United States” when using it alone. Abbreviate it when using it as a modifier as in:

(a) “U.S. armed forces” or “U.S. Constitution.”

(b) “U.S. citizen.”

(c) “U.S. forest service.”

NOTE: See sec. 2.11, *Drafting Manual*, concerning identification of a federal officer or agency.

2.05 PUNCTUATION. The traditional view is that punctuation is not part of the law. That is because in premodern times legislation was enacted after being read aloud to legislators, many of whom were illiterate; clerks and printers, rather than drafters, supplied the punctuation after a bill was enacted; and the rules of punctuation were so amorphous as to be not wholly reliable in conveying meaning. Today, however, proposed legislation is in printed form and the readings are largely a formality; punctuation is supplied by the drafter and read by legislators; and the rules of punctuation have crystallized enough so that punctuation can be helpful in conveying meaning. Accordingly, courts do use punctuation or the lack of it to construe statutes. Therefore, use punctuation carefully, together with syntax, to convey meaning, but do not rely solely on punctuation to convey meaning. See *Peterson v. Midwest Security Ins. Co.*, 248 Wis. 2d 567, 586–87 (2001) (dissent) [suggesting that meaning of statute may depend on placement or absence of comma; “I question whether the legislature’s

choice of punctuation in a statute may be dismissed so easily.”].

(1) **Quotation Marks.** (a) *Definitions.* Use quotation marks when defining a word or phrase. Example: In this section, “cost of construction” means

(c) *Periods and commas inside quotation marks.* In proposals other than simple amendments, if a period or comma follows the last word of a quotation, place the period or comma inside the last quotation mark. In amendments show the proposed changes, including punctuation, within quotation marks followed by a period. See example 8.01 (2) (B) 2a. Use double quotation marks when treating quoted material, as in an amendment to an amendment. See example 8.01 (2) (B) 2b., page 1, line 9.

(1m) **Serial Comma.** In a series of three or more terms with a single conjunction, use a comma after each term except the last. For example, write “red, white, and blue” or “plastic, wood, or metal.” When you amend a statutory provision that lacks a comma before the conjunction in a series of three or more terms, adding the comma is optional.

NOTE: Be aware that the Supreme Court has used the absence of a serial comma as a factor in construing a statute, noting that where serial commas were otherwise used in the statute the lack of a serial comma suggested that two clauses was intended to be construed together. *State v. Jensen*, ___ Wis. 2d ___, 2010 WI 38, ¶¶22–¶23 (2010).

(2) **Parentheses.** Do not use parentheses in drafting statutory text. Delete illustrative material as surplusage. Material within parentheses may be read as having less legal impact than other material; this may result in misinterpretation of laws. Rather than using parentheses, set the material apart with commas or break it into more than one sentence. Parentheses may be used in limited circumstances in analyses.

(3) **Striking and Underscoring Punctuation.** Strike through punctuation to be removed

from the statutes, session laws, constitution, or legislative rules and underscore new punctuation.

2.055 BRACKETS OR BRACES.

(1) Treatment of Obvious Errors. (a) To correct obvious errors in the statutes, for example, words or cross–references that are clearly extraneous, mistakenly inserted, or erroneously deleted, the LRB composes correction and revision bills. See secs. 24.02 and 24.03, *Drafting Manual*. If a revision or correction bill fails to pass by the last scheduled floorperiod of a legislative session, however, the LRB, in printing the statutes, will print in brackets in an affected provision the extraneous, mistakenly inserted, or erroneously deleted words or cross–references or a correct version and will include a NOTE after the provision. On rare occasions, if a double error affects language (for example, a word intended to be deleted was not stricken and a replacement word intended to be inserted was not underscored), the LRB will print the intended deletion in braces ({}) and the intended replacement in brackets. If in drafting you must amend or repeal and recreate a provision that contains brackets or braces, read the revising NOTE that accompanies the provision and the relevant section of the underlying act, and draft accordingly. If amending, strike through erroneously added statutory material; underscore erroneously deleted material; or strike through incorrect material and underscore the correct version. Mark for deletion, by hand, the brackets, braces, and any part of the bracketed material that is not needed for an amendment. Do not strike through the unneeded bracketed material.

(b) Note that a correct cross–reference that is shown in brackets is the full cross–reference. Only strike the incorrect portion of the nonbracketed cross–reference and underscore the correct portion of the bracketed cross–reference; mark for deletion, by hand, the brackets and any part of the bracketed cross–reference that is not needed for the amendment. For example:

SECTION 1. 6.55 (2) (cs) of the statutes is amended to read:

6.55 (2) (cs) The board shall provide to each municipal clerk a list prepared for use

at each polling place showing the name and address of each person whose name appears on the list provided by the department of corrections under s. 301.03 (20) s. 301.03 (20m) as ineligible to vote on the date of the election, whose address is located in the area served by that polling place, and whose name does not appear on the poll list for that polling place.

NOTE: The bracketed language indicates the correct cross–reference. Corrective legislation is pending.

(2) Disagreement with Note. If you disagree with the revising NOTE and draft a different treatment of the provision than the NOTE proposes, include a note to the legislative editors in the draft so that they will know your change is purposeful.

2.06 APPROPRIATE MATERIAL FOR INCLUSION. (1) Only Provisions with Legal Effect.

(a) The law consists of provisions intended to have a legal effect. Do not include material that has no legal effect in a draft for insertion into the statutes. This material impairs the usefulness of the statutes and may contribute to misinterpretation and confusion. LRB attorneys must save statute users the needless work of sorting through irrelevant material by keeping that material out of the statutes. Section 13.92 (1) (bm) 15., stats., directs the LRB to identify statutory provisions without legal effect for deletion by the legislature. See sec. 7.11, *Drafting Manual*, concerning statements of legislative intent. If a requester insists that you include material that is clearly irrelevant or without legal effect, consult the chief of the LRB.

(b) Material without legal effect includes examples, illustrations, rationale, background information, estimates, projections, suggestions, advice, or argumentative matter. Alternatives to including this material are drafting resolutions and joint resolutions, establishing opinion request procedures [see s. 19.98, stats.], publishing plain language manuals [see s. 11.21 (14), stats.], establishing public information programs [see s. 23.165, stats.], or distributing to legislators memoranda containing background material or explanations of the basis

for a provision or proposal. Material without legal effect also includes new provisions that duplicate provisions already appearing elsewhere in the statutes. In this situation, a requester might be satisfied with an appropriate cross-reference.

(c) Be careful when referring to action by the legislature. For example, s. 36.09 (1) (gm), stats., prohibits the Board of Regents of the University of Wisconsin System from creating any college, school, or its functional equivalent “except as specifically authorized by the legislature in each instance.” This clause does not state whether the legislature must authorize by law or by joint resolution. If it may authorize by joint resolution, there may be a constitutional issue. See article IV, section 17 (2), and article V, section 10, of the constitution and sec. 17.13, *Drafting Manual* [resolutions, other than joint resolutions submitting constitutional amendments to the people, express opinions or make requests only; they do not have the force of law]. If the legislature may authorize by law, the clause is surplusage because it is equivalent to stating: “This prohibition remains in effect unless amended or repealed.” A better provision would simply prohibit the Board of Regents from creating a college, school, or its functional equivalent. Any proposed creation would then clearly require authorization by law.

(2) Exclude Surplus Material. There is a good legal reason to exclude surplus material from a draft: it may actually damage the draft and result in faulty interpretation. It is a well-established principle of statutory construction that the legislature always intends that every word is necessary. Using this principle, a court may improperly narrow or broaden the scope of a provision because the legislature went out of its way to point out something that was not required. If something obviously does or does not apply, do not say so. Let the words speak for themselves.

NOTE: See *Roe v. Larson*, 99 Wis. 2d 332, 338 (1980), in which the supreme court strictly applied the “no surplusage” rule to interpret the insurance code in a way that was probably incorrect. [*Roe*

was overruled on other grounds by *Welch v. State Farm Mut. Auto. Ins. Co.*, 122 Wis. 2d 172, 178–79 (1985).] See also *Bartholomew v. Wisconsin Patients Compensation Fund*, 293 Wis. 2d 38, 2006 WI 91 ¶¶83 to ¶¶85 (2006) [court found that its construction was needed to avoid rendering word superfluous].

(3) Avoid Contradiction. (a) All drafting must be internally consistent and externally consistent with any existing law that is not affected by the draft. Although a penalty or other consequence may be prescribed for violation of a provision, do not include a provision that requires a violation of another provision of the law in order to be given effect.

(b) Do not incorporate a reference to any occurrence or action that is based on a legally or factually invalid premise. For example, if a bill has not been enacted, do not base another draft on the assumption that it will be enacted. If moneys were legally required to lapse from an appropriation, do not base a draft on the assumption that they did not lapse. Do not refer to legal circumstances that are constitutionally impossible, such as the fifth year of a governor’s term of office or a general election held in an odd-numbered year.

NOTE: See sec. 7.05 (2), *Drafting Manual*, concerning drafting contingent on passage of another proposal.

2.07 MODELING AFTER OTHER LAWS. (1) **Changes to Model Law.** Attorneys frequently receive requests to model a draft after a state or federal law that serves the same purpose as, or functions in a manner analogous to, the requested draft. The requester may feel that, due to the enactment of the model proposal and its successful administration and favorable judicial review, the wording of the model is preferable to any other wording. However, changes may be necessary. Federal laws and the laws of other states are often drafted in an archaic style and may contain material that is unnecessary in this state because it is covered by other provisions of Wisconsin law. In addition, the material often must be reworked to blend with Wisconsin law. Furthermore, the fact

that courts or agencies have adopted a saving construction of unclear wording does not make it a good idea to reuse that wording. Strive to write so precisely that adopting a saving construction is unnecessary.

(2) Cross–References. When modeling a draft after another Wisconsin law, check cross–references to that law. It also helps to find the session law that created the model law to discover whether any connecting provisions require treatment.

NOTE: If you model a created provision after an existing provision, courts may look to the existing provision, and compare the two provisions, to aid in statutory interpretation. See *Donaldson v. Board of Commissioners*, 272 Wis. 2d 146, 165–68 (2004); *Citizens Concerned for Cranes and Doves v. DNR*, 270 Wis. 2d 318, 340, 348 (2004); *Orion Flight Services v. Basler Flight Services*, 290 Wis. 2d 421, 2006 WI 51 P42 (2006); and *Heritage Farms, Inc. v. Markel Ins. Co.*, 316 Wis. 2d 47, 64–65 (2009) [determining legislative intent where a given provision is contained in one statute and omitted from a similar statute].

(3) Use of Model Law. Perhaps the best use of another law is as a resource to discover provisions that serve the requester’s purpose and can be included in the requester’s draft.

2.08 CONFLICTS WITH FEDERAL LAWS AND REGULATIONS. **(1) Constitutional Conflicts.** Because of the steadily increasing volume of federal laws and regulations, actual and potential conflicts with proposed state legislation are increasingly frequent. Under the supremacy clause (article VI) of the U.S. Constitution, a direct conflict between a requester’s instruction and a federal law or regulation that is binding upon this state raises a constitutional issue that the attorney must in turn raise with the requester.

(2) Preemption. In general, federal law preempts state law if Congress has expressed an intent to occupy a given field. If Congress has not

expressed that intent, state law is preempted when it is impossible to comply with both federal and state law or when state law stands as an obstacle to the accomplishment of the purpose of the federal scheme. *Pacific Gas & Elec. Co. v. State Energy Resources Conserv. & Dev. Comm.*, 103 S. Ct. 1713, 1722 (1983). The U.S. Supreme Court has held that state law may be implicitly preempted “... if a scheme of federal regulation is ‘so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,’ if ‘the Act of Congress ... touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject,’ or if the goals ‘sought to be obtained’ and the ‘obligations imposed’ reveal a purpose to preclude state authority.” *Wis. Public Intervenor v. Mortier*, 111 S. Ct. 2476, 2481–82 (1991). See *Rowe v. New Hampshire Motor Transport Ass’n*, ___ U.S. ___, 128 S. Ct. 989, 995–98 (2008); *Crosby v. NETC*, 120 S. Ct. 2288, 2293–94 (2000); *Medtronic, Inc. v. Lohr*, 116 S. Ct. 2240, 2250–51 and 2260–61 (1996); *N.Y. Conference of Blue Cross v. Travelers Inc.*, 115 S. Ct. 1671, 1676–77 (1995); and *Burlington Northern v. Doyle*, 186 F. 3d 790 (7th Cir. 1999).

(3) Other Conflicts. Many federal laws and the regulations implementing them establish federal–state programs in which state participation is voluntary. When dealing with those laws and regulations, make clear to the requester that a conflict does not create a constitutional issue but explain the consequences of nonconformity, for example, possible loss of federal funding.

(4) Trade Agreements. Since 1994, the federal government has entered into a number of international trade agreements. Trade agreements cover more than imports and exports. They also cover the rights of international investors, international trade in services (for example, banking), and government procurement, among other things. Some current and proposed state laws potentially conflict with trade agreements. A conflict with a trade agreement does not automatically invalidate state law. However, if a state law is found to violate a trade agreement, the

trade agreement may authorize another country to impose trade sanctions against the United States (which could harm Wisconsin businesses) or may authorize a private entity to obtain monetary compensation from the federal government. The Office of the United States Trade Representative (USTR) has indicated that in case of an inconsistency between trade commitments and state laws, the federal government may seek to have the state bring the law into compliance. If you encounter questions concerning international trade, you may be able to obtain assistance from the National Conference of State Legislatures, from the Internet site of the USTR (www.ustr.gov), or from the Forum on Democracy and Trade (<http://www.forumdemocracy.net/>).

2.09 COURT DECISIONS AND ATTORNEY GENERAL OPINIONS. If a statute that you are amending or an analogous statute has been interpreted in a court decision, be aware of the interpretation. Also, be aware that, if you amend a statute and fail to negate the effect of a court decision interpreting that statute, the courts may presume legislative acquiescence in the decision. See *State v. Olson*, 175 Wis. 2d 628, 641 (1993); *Morris v. Juneau County*, 219 Wis. 2d 543, 555–57 (1998); *Fandrey v. American Family Mut. Ins. Co.*, 272 Wis. 2d 46, 70 (2004); *State v. Stenklyft*, 281 Wis. 2d 484, 512 (2005); and *Progressive Northern Ins. Co. v. Romanshek*, 281 Wis. 2d 300, 330 and 332 (2005). If you amend a statute that has been interpreted by the attorney general in a published opinion, be aware that the opinion may be regarded as presumptively correct if the legislature makes no changes in response to the opinion. See *Staples v. Glienke*, 142 Wis. 2d 19, 28 (Ct. App. 1987).

2.10 REFERENCES RELATED TO AMERICAN INDIAN TRIBES. There is a process by which the federal Department of the Interior formally recognizes an American Indian tribe or band. In most circumstances involving American Indian governmental units in this state, the appropriate reference is to “a federally recognized American Indian tribe or band in this state.” Some statutes refer to “the governing body of a federally recognized American Indian tribe or band.” In most cases, a statute should refer to the tribe or band, rather than to the governing body, just as statutes generally refer to the state, rather than to the legislature. For example, if a draft relates to a tribal identification card, the card would probably be issued by a tribal agency, rather than by the governing body of the tribe itself. If you need to refer to a tribal governing body, draft the reference carefully. In some tribes the entire membership of the tribe may be considered to be the governing body for some purposes, so you may want to refer to “an elected governing body”

2.11 REFERENCES TO FEDERAL OFFICERS OR AGENCIES. Identify federal officers and agencies with “federal” unless “U.S.” or “national” is a part of the proper name of the officer or agency. You may verify the proper form for references to federal officers and agencies in the latest edition of the *U.S. Government Manual*, which is in the library and on the Internet at www.gpoaccess.gov/gmanual. Note that federal terminology is often inconsistent; check the manual unless you are certain of the proper reference.